

DOCUMENT RESUME

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[Reimbursement of Relocation Expenses Incident to Transfer of Function]. B-189778. December 4, 1978. 3 pp.

Decision re: Postal Service; by Robert F. Keller, Deputy Comptroller General.

Contact: Office of the General Counsel: Personnel Law Matters I.
Organization Concerned: General Services Administration.
Authority: 5 U.S.C. 5724. 5 U.S.C. 5721. 5 U.S.C. 104. 5 U.S.C. 105. 56 Comp. Gen. 709.

Questions were asked as to whether an agency may refuse to reimburse an employee for relocation expenses because of budget considerations and, if not, whether an employee may waive reimbursement. Employees who were transferred from the Postal Service to the General Services Administration were not eligible for reimbursement of relocation expenses since reimbursement is restricted by law to employees of an "agency" which excludes the Postal Service. Although this determination made it unnecessary to answer the questions, budget constraints cannot be a basis for denying an employee reimbursement of relocation expenses.
(HTW)

DECISION

C. Roney PLM I
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548 *8510*

FILE: B-189778

DATE: December 4, 1978

MATTER OF: Postal Service Employees -- Relocation
incident to transfer of function to GSA

DIGEST: 1. Employees of Postal Service contract compliance unit were transferred to General Services Administration (GSA) incident to a transfer of function. They are not eligible for relocation expenses under 5 U.S.C. §§ 5724 and 5724a since those sections restrict reimbursement to employees of an agency. The term "agency", as defined in 5721(1) and 5 U.S.C. § 105, excludes the United States Postal Service. Therefore, individuals who transfer to or from the Postal Service are not eligible for relocation expenses under 5 U.S.C. §§ 5724 and 5724a.

The Administrator, General Services Administration, asks whether an agency may refuse to reimburse an employee for relocation expenses because of budget considerations and, if he cannot, whether an employee may effectively waive reimbursement of those expenses.

The Administrator states that the questions arise due to the transfer of a Postal Service contract compliance function to the General Services Administration (GSA) effective April 1, 1976. The transfer was accomplished by Order No. 1 (Revised) dated January 20, 1976, of the Acting Director, Office of Federal Contract Compliance Functions, United States Department of Labor. As a result of the transfer of function, GSA was required to offer employment to 67 Postal Service employees. To help accommodate the transfer of function, GSA's personnel ceiling was increased by the Office of Management and Budget by a total of 25 positions. The Administrator states that because of personnel ceiling limitations and budget constraints, each of the transferees was advised that "if more than twenty-five employees accept the GSA offer, a reduction-in-force will be highly probable." However, all of the 67 employees were offered positions with GSA at their existing salary. Also, the Postal Service provided each employee with an offer of a Postal Service position, which usually was at a lower salary rate.

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Apparently, 27 employees accepted the GSA offer of employment and all were able to be accommodated because of GSA employee turnover and retirements.

The Administrator states that since this action had not been planned for, there was no money in the budget to pay for other benefits for the 27 employees. Although the Postal Service transferred some funds for salaries and retirement contributions and the Office of Management and Budget allowed GSA to request additional funds, insufficient funds were available to enable GSA to pay all the necessary expenses. Accordingly, GSA advised each employee that it would not be able to pay appropriate relocation expenses because of its budget situation.

The Administrator presents two questions for our resolution. The first question is whether the authorization and approval of expenses incurred incident to an employee's transfer is within an agency's discretion in order that such expenses may be withheld due to budget considerations. The second question presented is whether an employee may effectively waive appropriate reimbursement for transfer related expenses.

Although not raised by GSA, we believe that a threshold question is whether an employee who transfers or is transferred to or from the Postal Service is eligible for reimbursement of relocation expenses. Sections 5 U.S.C. § 5724 and 5724a (1976), of title 5, United States Code, which authorize payment of relocation expenses, are limited by section 5721(2) to apply only to "an individual employed in or under an agency." The term "agency" is defined in section 5721(1) as including an "Executive agency," which under, 5 U.S.C. § 105, includes an "independent establishment." However, the latter is defined at 5 U.S.C. § 104 as follows:

"For the purpose of this title, 'independent establishment' means -

"(1) an establishment in the executive branch (other than the United States Postal Service or the Postal Rate Commission) which is not an Executive department, military department,

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Government corporation, or part thereof, or part of an independent establishment* * *." (Emphasis added).

Since the Postal Service is not an "agency" within the meaning of 5 U.S.C. § 5721(1), it follows that an employee of the Postal Service is not covered by the provisions of 5 U.S.C. § 5724 and 5724a, and is not entitled to relocation expenses thereunder upon transfer to an agency covered under those sections. Rather the situation here is analogous to that of a new employee who, unless he qualifies as a manpower shortage category employee, must bear the expenses of reporting to his first duty station. Thus, the subject employees are not eligible for reimbursement of relocation expenses under 5 U.S.C. §§ 5724 and 5724a.

In view of the above we find it unnecessary to answer the questions presented by the GSA Administrator. However, we note that the question pertaining to "budget constraints" was addressed in a decision of this Office, David C. Goodyear, 56 Comp. Gen. 709 (1977). In Goodyear we held that budget constraints cannot form the basis for denying an employee relocation expenses once his transfer has been found to be in the Government's interest.

R. F. Keller
Deputy Comptroller General
of the United States